

United States Courts
Southern District of Texas
FILED

November 07, 2023

Nathan Ochsner, Clerk of Court

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

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November 07, 2023

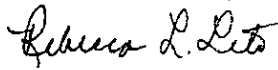
MEMORANDUM TO
COUNSEL OR PARTIES LISTED BELOW:

No. 23-20058 USA v. Reyes
USDC No. 4:21-CR-165-1

The court has granted the motion to supplement or correct the record in this case. The originating court is requested to provide us with a supplemental electronic record consisting of the documents outlined in the attached motion. Counsel is reminded that any citations to these documents must cite to the supplemental electronic record.

Sincerely,

LYLE W. CAYCE, Clerk


By: _____
Rebecca L. Leto, Deputy Clerk
504-310-7703

Ms. Marjorie A. Meyers
Ms. Carmen Castillo Mitchell
Mr. Nathan Ochsner
Mr. Xavier Jay Reyes
Ms. Kathryn Shephard

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**UNITED STATES OF AMERICA,
Plaintiff-Appellee,**

v.

No. 23-20058

**XAVIER JAY REYES,
Defendant-Appellant.**

**UNOPPOSED MOTION OF APPELLANT
FOR THE CREATION OF A SUPPLEMENTAL
RECORD ON APPEAL**

Appellant Xavier Jay Reyes hereby moves this Court to order the creation of a supplemental record on appeal, and in support thereof, shows the Court as follows:

I.

On February 9, 2023, the district court sentenced Mr. Reyes on his guilty-plea convictions, but deferred restitution for 90 days. On February 14, 2023, Mr. Reyes filed a timely notice of appeal from the judgment of conviction and sentence in his case. On April 14, 2023, the electronic record on appeal was filed, and this Court issued a briefing notice. Meanwhile, in the district court, the government filed a stipulation regarding restitution and request for amended judgment on May 2, 2023. On May 4, 2023, the district court entered an order setting restitution, but

did not enter an amended judgment.

On May 25, 2023, undersigned counsel filed a brief and a motion to withdraw in accordance with *Anders v. California*, 386 U.S. 738 (1967). After counsel filed the *Anders* brief and motion to withdraw, the district court entered an amended judgment adding restitution on June 8, 2023. Mr. Reyes did not file a notice of appeal of the amended judgment.

On October 19, 2023, this Court entered an order stating that counsel's brief was inadequate because it did not address restitution, and ordered counsel to file a supplemental *Anders* brief or merits brief within 30 days. That supplemental brief is due on November 20, 2023.

II.

The Court's October 19, 2023, order requires counsel to address events that happened in the district court after the electronic record on appeal was filed on April 18, 2023. Accordingly, Mr. Reyes asks the Court to order the creation of a supplemental electronic record on appeal that includes the activities in the district court after April 18, 2023, that relate to the Court's order, that is, district court docket entries 71 through 81.

III.

The government, per Appellate Deputy Chief Katherine Haden, is unopposed to this motion.

Accordingly, Appellant-Defendant Xavier Jay Reyes, moves this Court moves this Court to order the creation of a supplemental record on appeal.

Respectfully submitted,

MARJORIE A. MEYERS
Federal Public Defender
Southern District of Texas

s/ Kathryn Shephard
KATHRYN SHEPHARD
Assistant Federal Public Defender
Attorneys for Defendant-Appellant
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Houston, Texas 77002
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CERTIFICATE OF SERVICE

All parties required to be served with copies of this document have been so served by filing via the Fifth Circuit ECF filing system.

s/ Kathryn Shephard
KATHRYN SHEPHARD

CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 342 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6), as incorporated by Fed. R. App. P. 27(d)(1)(E), because it has been prepared in a proportionally spaced typeface using Microsoft Word Office 365 (current version) software in Times New Roman 14-point font in text and Times New Roman 12-point font in footnotes.

3. This document complies with the privacy-redaction requirement of 5th Cir. R. 25.2.13 because it has been redacted of any personal data identifiers.

4. This document complies with the electronic-submission requirement of 5th Cir. R. 25.2.1 because it is an exact copy of the paper document.

5. This document has been scanned for viruses with the most recent version of a commercial virus scanning program and is free of viruses.

s/ Kathryn Shephard
KATHRYN SHEPHARD